

**THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

**ROBERT ENGLISH,**

**Plaintiff,**

**v.**

**JUANITA M. LAIDLER,**

**Defendant.**

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**Civil Action  
No. 5:09-cv-245 (CAR)**

**ORDER ON RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is the Recommendation of the United States Magistrate Judge (Doc. 7) that Plaintiff's claims for injunctive relief be dismissed for failure to state a claim under 42 U.S.C. § 1983. Plaintiff has entered an objection to the Recommendation (Doc. 11). Upon review of the Objection and the relevant legal authorities, the Court disagrees with the Recommendation and therefore declines to accept it. It appears that Plaintiff's Complaint is sufficient to state a claim for injunctive relief against Defendant under 42 U.S.C. § 1983 and to survive initial review under 28 U.S.C. § 1915A.

Section 1983 authorizes the sort of injunctive relief that Plaintiff requests in this case. In his Complaint, Plaintiff alleges that Defendant, the Clerk of the Superior Court of Macon County, has denied him access to due process by refusing to assign to a judge of the court his motion for an out-of-time appeal and various other motions. He asks the Court to enjoin Defendant to assign his motions so that they may be reviewed by a judge. His petition for injunctive relief is properly brought as a request for a mandatory injunction under Section 1983, as distinguished from a petition

for mandamus under 28 U.S.C. § 1361. See Carter v. Hardy, 526 F.2d 314, 315 (5<sup>th</sup> Cir. 1976). Section 1983 authorizes federal injunctive relief against state officials, whether executive, legislative, or judicial, to prevent violation of due process rights. Mitchum v. Foster, 407 U.S. 225, 240-242 (1972). As such, Plaintiff's claim for injunctive relief cannot be dismissed as frivolous on initial review.

It is SO ORDERED this 24th day of September, 2009.

S/ C. Ashley Royal  
C. ASHLEY ROYAL, JUDGE  
UNITED STATES DISTRICT COURT

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